

Robert A. Weikert (Bar No. 121146)
rweikert@nixonpeabody.com
Dawn N. Valentine (Bar No. 206486)
dvalentine@nixonpeabody.com
NIXON PEABODY LLP
One Embarcadero Center
San Francisco, California 94111-3600
Tel: (415) 984-8200
Fax: (415) 984-8300

David L. May (appearance *pro hac vice*)
dmay@nixonpeabody.com
Jennette E. Wiser (appearance *pro hac vice*)
jwiser@nixonpeabody.com
NIXON PEABODY LLP
799 9th Street NW
Washington, DC 20001-4501
Tel: (202) 585-8000
Fax: (202) 585-8080

Jason T. Kunze (appearance *pro hac vice*)
jkunze@nixonpeabody.com
NIXON PEABODY LLP
70 West Madison Street, 35th Floor
Chicago, IL 60602
Tel: (312) 977-4400
Fax: (312) 977-4405

Attorneys for Stardock Systems, Inc.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION**

STARDOCK SYSTEMS, INC.,

Plaintiff,

vs.

PAUL REICHE III and ROBERT
FREDERICK FORD,

Defendants.

Case No.: 4:17-cv-07025-SBA

**[PROPOSED] ORDER RE PLAINTIFF'S
EVIDENTIARY OBJECTIONS TO THE
DECLARATION OF REICHE IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
STARDOCK'S MOTION FOR TEMPORARY
RESTRAINING ORDER AND ORDER TO
SHOW CAUSE WHY PRELIMINARY
INJUNCTION SHOULD NOT BE GRANTED**

Judge: Hon. Sandra B. Armstrong

Complaint Filed: Dec. 8, 2017

Trial Date: June 24, 2019

**[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO
DEFENDANTS' OPPOSITION TO STARDOCK'S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY
PI SHOULD NOT BE GRANTED**

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
1.	<p>“In the Summer of 1988, I created the concept for the Star Control computer game and made a proposal to develop it to multiple video game publishing companies, including Accolade.”</p> <p>Reiche Decl., p. 2, ¶ 2, lines 5-7</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that he “created the concept for the Star Control computer game,” or that he made development proposals to “multiple video game publishing companies.</p> <p><u>FRE 1002</u> Furthermore, the declarant has failed to include the proposal documents required by the “best evidence” rule to prove that these development proposals took place.</p>	<p>___ Sustained</p> <p>___ Overruled</p>
2.	<p>“This mode of gameplay was unique when we created and released <i>Star Control</i>, as far as I recall.”</p> <p>Reiche Decl., p. 2, ¶ 5, lines 27-28</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that the mode of gameplay was unique at the time <i>Star Control</i> was created.</p> <p><u>FRE 602</u> <u>Speculation</u> The declarant lacks personal knowledge and is speculating</p>	<p>___ Sustained</p> <p>___ Overruled</p>

	Objectionable Evidence	Grounds for Objection	Court's Ruling
		as to whether any other games had similar modes of gameplay at the time <i>Star Control</i> was released.	
3.	“Each of the alien species has a unique name, appearance, ship(s), weapons, backstory, and conversational style.” Reiche Decl., p. 3, ¶ 7, lines 7-8	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.	___ Sustained ___ Overruled
4.	“As far as I know, no other game had a screen display, layout, and functionality like this before, or since (except for Stardock’s <i>Origins</i> beta initially called “Super Melee” and then “Fleet Battles” as discussed below).” Reiche Decl., p. 4, ¶ 9, lines 12-14	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement. <u>FRE 602</u> <u>Speculation</u> The declarant lacks personal knowledge and is speculating as to whether any other games had similar screen display, layout, and functionality similar to <i>Star Control</i> .	___ Sustained ___ Overruled
5.	“Fred and I were the primary authors of most of the creative materials incorporated into both <i>Star Control I and II</i> , including the game design, story, art, sound effects, software code, and other materials.” Reiche Decl., p. 4, ¶ 11, lines 17-19	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.	___ Sustained ___ Overruled
6.	“. . . I personally created the names, initial concepts, written descriptions, and sketches of every character in the games, as well as their history, physical and cultural details, and conversation design and text	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that he actually created any of the elements	___ Sustained ___ Overruled

- 3 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO
 DEFENDANTS' OPPOSITION TO STARDOCK'S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY
 PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
	specifications. I also wrote a majority of the dialogue for the characters, and illustrated a majority of the ships, among other things.” Reiche Decl., p. 4, ¶ 12, lines 20-24	contained in this statement.	
7.	“In addition to co-leading the development of the games with me and acting as one of the producers, Fred personally wrote all of the code for both <i>Star Control I and II</i> , as far as we can recall.” Reiche Decl., p. 4, ¶ 13, lines 25-27	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement. <u>Speculation</u> The declarant is speculating as to the role that Fred had in the development of <i>Star Control I and II</i> , as evidenced by the statement “as far as we can recall.”	___ Sustained ___ Overruled
8.	“To the best of my recollection, everyone who contributed creative content to the games agreed to assign any copyrights to their material to Fred and me at that time, and have since signed written agreements confirming this.” Reiche Decl., p. 5, ¶ 14, lines 4-6	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that other individuals who worked on the <i>Star Control</i> computer game agreed to assign their copyrights. <u>Speculation</u> The declarant is speculating as to whether other contributors in the development of <i>Star Control I and II</i> agreed to assign copyrights to Fred and the declarant, as evidenced by the statement “[t]o the best of my recollection . . .” <u>FRE 1002</u>	___ Sustained ___ Overruled

- 4 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO
 DEFENDANTS' OPPOSITION TO STARDOCK'S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY
 PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
		Furthermore, the declarant has failed to include the assignment documents required by the "best evidence" rule to prove that these assignments actually took place.	
9.	<p>"Thus, aside from a small amount of music in <i>Star Control II</i> which we licensed, all copyrights to <i>Star Control I and II</i> are and have always been owned by Fred and me.</p> <p>Reiche Decl., p. 5, ¶ 15, lines 7-8</p>	<p><u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether he owns "all copyrights to <i>Star Control I and II</i>." As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p> <p><u>FRE 1002</u> Furthermore, the declarant has failed to include the copyright ownership documents required by the "best evidence" rule to prove ownership.</p>	<p>___ Sustained</p> <p>___ Overruled</p>
10.	<p>"Fred and I later obtained U.S. Copyright Registration No. PA 2-071-496 for the work titled 'Star Control II,' which covers all computer program code for that game, and U.S. Copyright Registration No. PA 2-107-340 for the work titled 'Star Control II,' which covers all of the audiovisual</p>	<p><u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to what the alleged copyrights do or do not cover. As a result,</p>	<p>___ Sustained</p> <p>___ Overruled</p>

- 5 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS' OPPOSITION TO STARDOCK'S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
	and written content in the game . . .” Reiche Decl., p. 5, ¶ 19, lines 21-24	his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.	
11.	“ <i>Star Control 3</i> was not as well-received as <i>Star Control I</i> and <i>II</i> .” Reiche Decl., p. 6, ¶ 20, lines 6-7	<u>FRE 602</u> The declarant lacks the personal knowledge necessary to make this statement. <u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that <i>Star Control 3</i> was not as well-received as <i>Star Control I</i> and <i>II</i> .	___Sustained ___Overruled
12.	“Accolade offered to purchase all rights to <i>Star Control I</i> and <i>II</i> and any other <i>Star Control</i> products from me. Accolade acknowledged that Fred and I created and owned <i>Star Control</i> , including ‘its themes, settings, plot lines, characters, its ‘essence’ as entity unique from any other science-fiction game,’ and that <i>Star Control 3</i> was created only with Fred’s and my permission under agreements with Accolade.” Reiche Decl., p. 6, ¶ 22, lines 11-15	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that Accolade offered to purchase rights to <i>Star Control</i> , and that it acknowledged that the declarant was the owner of those rights. <u>FRE 801, 802</u> Furthermore, the statements allegedly made by Accolade are extrajudicial statements being offered for their truth, and as such they are inadmissible hearsay without exception. <u>FRE 1002</u> Finally, the declarant has failed	___Sustained ___Overruled

- 6 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS’ OPPOSITION TO STARDOCK’S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
		to include the documents required by the "best evidence" rule to prove that Accolade did indeed make an offer to purchase any rights to the Star Control games.	
13.	<p>"In November 1997, Accolade asked instead for a perpetual exclusive license to the classic background material for <i>Star Control I and II</i> for use in a new Star Control game and potential future sequels. Accolade stated that '[c]urrently, Accolade owns the rights to the title Star Control, and [Reiche and Ford] own the rights to the classic background material created for Star Control and Star Control 2,' and that '[Accolade] would like to unify the Star Control license . . ."</p> <p>Reiche Decl., p. 6, ¶ 23, lines 17-22</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that Accolade wanted a perpetual license, and that it acknowledged that the declarant was the owner of those rights.</p> <p><u>FRE 801, 802</u> Furthermore, the statements allegedly made by Accolade are extrajudicial statements being offered for their truth, and as such they are inadmissible hearsay without exception.</p> <p><u>FRE 1002</u> Finally, the declarant has failed to include the documents required by the "best evidence" rule to prove that Accolade did indeed make an offer to purchase an exclusive license to the Star Control games.</p>	<p>___ Sustained</p> <p>___ Overruled</p>
14.	<p>Accolade never paid me any advances or royalties under Addendum No. 3 after the initial advance in 1998 . . . Accolade also stopped paying royalties for sales of</p>	<p><u>FRE 901</u> <u>Speculation</u> The declarant has failed to provide the foundation required to support his statement that Accolade did</p>	<p>___ Sustained</p> <p>___ Overruled</p>

- 7 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS' OPPOSITION TO STARDOCK'S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
	<p>the Classic Star Control Games after 2000 at the latest, indicating that it had stopped selling them. "Thus, the 1988 License Agreement and Addenda Nos. 1-3 expired and terminated by April 1, 2001, and all copyrights to <i>Star Control I and II</i> and our materials used in <i>Star Control 3</i> reverted to Fred and me on or about April 1, 2001.</p> <p>Reiche Decl., p. 7, ¶ 27, lines 6-11</p>	<p>not make advances after 1998 or pay royalties after 2000, and is speculating as to whether Accolade did indeed stop selling Classic Star Control Games after 2000.</p> <p><u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to when the License Agreement terminated, and whether "all copyrights to <i>Star Control I and II</i> and [the] materials used in <i>Star Control 3</i>" reverted to the declarant on or about April 1, 2001. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p>	
15.	<p>"... Accolade indicated that it was no longer using the name and had no plans to do so in the future."</p> <p>Reiche Decl., p. 7, ¶ 28, lines 15-16</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement that Accolade no longer intended to use the Star Control mark.</p> <p><u>FRE 801, 802</u> Furthermore, the statements allegedly made by Accolade are extrajudicial statements being offered for their truth, and as such they are</p>	<p>___ Sustained</p> <p>___ Overruled</p>

- 8 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS' OPPOSITION TO STARDOCK'S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
		inadmissible hearsay without exception.	
16.	<p>On or about April 1, 2011, Fred and I learned that a company called Good Old Games was selling <i>Star Control I and II</i> on its website, GOG.com . . . without our permission and in violation of our copyrights.</p> <p>Reiche Decl., ¶ 32, p. 7 lines 27-28 top. 8 line 1</p>	<p><u>FRE 602</u> <u>FRE 701</u></p> <p>The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether Good Old Games was violating any copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p>	<p>___ Sustained</p> <p>___ Overruled</p>
17.	<p>“On April 22, 2011, Fred and I notified Atari and GOG that we were the authors and owners of <i>Star Control I and II</i> and had not given permission for Atari to sell them. We reminded Atari that while Accolade once held the publishing rights, such rights expired long ago and that any purported agreement by Atari concerning our work violated our rights.”</p> <p>Reiche Decl., p.8, ¶ 33, lines 4-8</p>	<p><u>FRE 602</u> <u>FRE 701</u></p> <p>The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether he owned <i>Star Control I and II</i>, whether Accolade’s publishing rights had expired, and whether Atari had the right to sell any of the <i>Star Control</i> games. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p>	<p>___ Sustained</p> <p>___ Overruled</p>
18.	<p>“On January 2, 2012, we entered into an agreement with GOG to provide it with a non-exclusive</p>	<p><u>FRE 901</u></p> <p>The declarant has failed to provide the foundation required to support his</p>	<p>___ Sustained</p> <p>___ Overruled</p>

- 9 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS’ OPPOSITION TO STARDOCK’S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
	<p>license to distribute the Classic Star Control Games . . .”</p> <p>Reiche Decl., p. 8, ¶ 37, lines 19-21</p>	<p>statement that he agreed to a non-exclusive license with GOG to distribute the Classic Star Control Games.</p> <p><u>FRE 1002</u> Additionally, the declarant has failed to include the documents required by the “best evidence” rule to prove that the alleged non-exclusive license took place.</p>	
19.	<p>“I understand that around January 2013, Atari filed for bankruptcy and put its assets up for auction, including the “Star Control Franchise” consisting of some rights to “Star Control 3” but no rights to the <i>Star Control I and II</i> games that Fred and I create and for which we own the copyrights.”</p> <p>Reiche Decl., p. 8, ¶ 38, lines 23-26</p>	<p><u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to what rights may or may not have been included in Atari’s bankruptcy, and whether or not the declarant owns any relevant copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p> <p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.</p> <p><u>Speculation</u> The declarant is speculating as to the details of Atari’s</p>	<p>___Sustained</p> <p>___Overruled</p>

- 10 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO
 DEFENDANTS’ OPPOSITION TO STARDOCK’S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY
 PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
		bankruptcy, as evidenced by the statement "I understand that around January 2013 . . ."	
20.	<p>"U.S. Copyright Registration No. PA 799-000 for Star Control 3 . . . could not have included rights to 'characters, names, likenesses, characteristics, and other intellectual property rights pertaining to Star Control I and Star Control II in which Reiche has an ownership interest' that we licensed to Accolade under Addendum No. 2 to the 1988 License Agreement."</p> <p>Reiche Decl., ¶ 39, p. 8 lines 27-28 top. 9 lines 1-4.</p>	<p><u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to what a copyright registration may include, and whether or not the declarant owns any relevant copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p> <p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.</p>	<p>___ Sustained</p> <p>___ Overruled</p>
21.	<p>"Stardock now claims it also bought exclusive publishing rights to Fred's and my <i>Star Control I and II</i> games under the 1988 License Agreement. This is not possible for at least three reasons. First, the 1988 License Agreement expired by 2001, when Accolade ceased selling the games and paying royalties to me. Second, even if it had not expired in 2001, under the 1988 License Agreement, all rights to our games would have reverted to me when the Atari</p>	<p><u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to the transfer of publishing rights as a result of Atari's bankruptcy, whether or not the declarant owns any of the relevant copyrights, and as to whether the 1988 License Agreement could be assigned</p>	<p>___ Sustained</p> <p>___ Overruled</p>

- 11 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS' OPPOSITION TO STARDOCK'S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
	<p>bankruptcy took more than 90 days to be terminated. Third, the 1988 License Agreement could not be assigned without my consent, and Atari and Stardock never asked for nor received such consent from me.”</p> <p>Reiche Decl., p. 9, ¶ 40, lines 5-12</p>	<p>without his consent. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p> <p><u>FRE 901</u></p> <p>The declarant has failed to provide the foundation required to support his statement.</p>	
22.	<p>“Fred and I hold the copyrights to Star Control I and II personally . . . We also hold the use of those copyrights in Star Control II, but do not have any ownership of the new material in that product.”</p> <p>Reiche Decl., p. 10, ¶ 43, lines 2-4</p>	<p><u>FRE 602</u> <u>FRE 701</u></p> <p>The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to copyright ownership. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702</p>	<p>___Sustained</p> <p>___Overruled</p>
23.	<p>“Wardell admitted that ‘Atari doesn’t actually own the copyright on Star Control 1/2 so it’s not like one could make a Star Control 2 HD or what have you without a license from Paul Reiche.’”</p> <p>Reiche Decl., p. 10, ¶ 44, lines 7-9</p>	<p><u>FRE 901</u></p> <p>The declarant has failed to provide the foundation required to support his statement, nor even identified the source of this alleged statement.</p> <p><u>FRE 106</u></p> <p>Furthermore, this isolated statement is only a portion of a</p>	<p>___Sustained</p> <p>___Overruled</p>

- 12 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS’ OPPOSITION TO STARDOCK’S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
		larger conversation that the declarant should have included to provide necessary context.	
24.	Seemingly in response to Fred's and my announcement and refusal to license our content . . . Stardock began selling the Classic Star Control Games through Steam . . . without permission from us and in violation of our copyrights. Reiche Decl., p. 12, ¶ 63, lines 19-24	<u>FRE 602</u> <u>FRE 701</u> The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to the transfer of publishing rights as a result of Atari's bankruptcy, whether or not the declarant owns any of the relevant copyrights, and as to whether the 1988 License Agreement could be assigned without his consent. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702. <u>Speculation</u> Furthermore, the declarant is speculating as to Stardock's intentions behind selling the Classic Star Control Games through steam. <u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement or authenticate the alleged screenshot of Stardock's website.	___Sustained ___Overruled

- 13 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO
 DEFENDANTS' OPPOSITION TO STARDOCK'S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY
 PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
25.	<p>“In late 2017, Fred and I sent Valve a DMCA notice notifying them of our copyrights . . .”</p> <p>Reiche Decl., p. 13, ¶ 64, lines 19-20</p>	<p><u>FRE 602</u> <u>FRE 701</u></p> <p>The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether or not the declarant owns any of the relevant copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p> <p><u>FRE 1002</u></p> <p>Additionally, the declarant has failed to include the documents required by the “best evidence” rule to demonstrate the date and content of the Valve DMCA.</p>	<p>___ Sustained</p> <p>___ Overruled</p>
26.	<p>“Last fall, Stardock also began taking preorders for its forthcoming <i>Origins</i> game . . . and began releasing information about the game that suggests it will infringe our copyrights to the <i>Star Control I and II</i> games.”</p> <p>Reiche Decl., p. 13, ¶ 65, lines 23-25</p>	<p><u>FRE 602</u> <u>FRE 701</u></p> <p>The declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether Stardock’s game will infringe any copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p>	<p>___ Sustained</p> <p>___ Overruled</p>

- 14 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS’ OPPOSITION TO STARDOCK’S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
		<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement or authenticate the alleged screenshot of Stardock's website.	
27.	"From the publicly released videos . . ." Reiche Decl., p. 14, ¶ 66, line 3	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or even identified the videos to which he is referring.	___ Sustained ___ Overruled
28.	"On May 11, 2018, Wardell stated on Stardock's website that contrary to his prior statements, "[f]uture Star Control games will have the classic Star Control aliens in them . . . Only the most unreasonable person would argue that Star [] control games can't have Star Control aliens simply because an independent contractor of Accolade's claims rights to names he may or may not of [sic?] randomly generated 28 years ago. A screenshot of Stardock's online forum containing this statement is attached as Exhibit 13." Reiche Decl., p. 14, ¶ 66, line 3	<u>FRE 901</u> The declarant has failed to authenticate the alleged screenshot of Stardock's website, attached as Exhibit 13. <u>FRE 106</u> Furthermore, this isolated statement is only a portion of a larger text that the declarant should have included to provide necessary context.	___ Sustained ___ Overruled
29.	"Later in May 2018, Wardell conducted an informal survey or vote among potential purchasers of Origins of which aliens to include from <i>Star Control I and II</i> . At the end of the vote, he announced that	<u>FRE 602</u> <u>FRE 901</u> The declarant lacks the personal knowledge necessary to make this statement, and has failed to provide the foundation required.	___ Sustained ___ Overruled

- 15 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS' OPPOSITION TO STARDOCK'S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
	several alien races from <i>Star Control I and II</i> will also be in <i>Origins</i> , and that they will play the same roles as in the original game . . .” Reiche Decl., p. 15, ¶ 70, lines 7-11	<u>FRE 1002</u> Furthermore, the declarant has failed to include the documents required by the “best evidence” rule to demonstrate the accuracy of Wardell’s alleged comments and the results of the alleged survey. <u>FRE 106</u> Finally, this isolated statement is only a portion of a larger text that the declarant should have included to provide necessary context.	
30.	“In July 2018, Wardell confirmed that the Arilou will appear in <i>Origins</i> , and revealed that <i>Origins</i> will include other aliens from <i>Star Control I and II</i> called the Chenjesu and Melnorme.” Reiche Decl., p. 15, ¶ 71, lines 12-14	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement or to even indicate the source of this alleged statement.”	___Sustained ___Overruled
31.	“On August 13, 2018, Wardell stated that ‘Stardock owns the Star Control aliens. Paul and Fred *might* have copyrights to how those aliens were expressed in Star Control II but that’s the extent of it . . . Stardock will utilize the Star Control aliens as it sees fit.’ A screenshot of the UQM forum containing this post is attached hereto as Exhibit 14 Reiche Decl., p. 15, ¶ 72, lines 15-	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of the UQM forum post, attached as Exhibit 14. <u>FRE 106</u> Furthermore, this isolated statement is only a portion of a larger text that the declarant should have included to	___Sustained ___Overruled

- 16 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS’ OPPOSITION TO STARDOCK’S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
	18	provide necessary context.	
32.	<p>“On August 14, 2018, Wardell admitted that ‘We expect players to assume that the Arilou species [in <i>Star Control</i>; <i>Origins</i>] is related to the Arilou species in SC2 [<i>Star Control II</i>].’ A screenshot of the UQM forum containing this post is attached hereto as Exhibit 15.”</p> <p>Reiche Decl., p. 15, ¶ 73, lines 19-21</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of the UQM forum post, attached as Exhibit 15.</p> <p><u>FRE 106</u> Furthermore, this isolated statement is only a portion of a larger text that the declarant should have included to provide necessary context.</p>	<p>___Sustained</p> <p>___Overruled</p>
33.	<p>“... appearing to confirm our suspicion that Stardock will ultimately seek to stop us from using our own characters in our sequel. A screenshot of Stardock’s online forum containing this statement is attached as Exhibit 16.”</p> <p>Reiche Decl., p. 15, ¶ 74, lines 24-27</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of the UQM forum post, attached as Exhibit 16.</p> <p><u>Speculation</u> Furthermore, the declarant is speculating as to Stardock’s future intentions regarding its intellectual property.</p>	<p>___Sustained</p> <p>___Overruled</p>
34.	<p>“Stardock has also used on its website images of aliens that are substantially similar to and/or derived from aliens from <i>Star Control I and II</i>, e.g.: [Images of aliens allegedly from <i>Star Control I</i> and <i>II</i> and then current aliens</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of aliens from <i>Star Control I</i> and <i>II</i> or from Stardock’s website.</p>	<p>___Sustained</p> <p>___Overruled</p>

- 17 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS’ OPPOSITION TO STARDOCK’S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
	allegedly from Stardock's Website] Reiche Decl., p. 16, ¶ 75, lines 1-16	<u>FRE 602</u> <u>FRE 701</u> Furthermore, the declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether aliens in Stardock are "substantially similar to and/or derived from aliens from <i>Star Control I and II</i> ." As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.	
35.	"... given all of the above, [Origins] seems likely to infringe our copyrights." Reiche Decl., p. 16, ¶ 76, lines 17-20	<u>FRE 602</u> <u>FRE 701</u> Furthermore, the declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether Origins will infringe on any copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702. <u>Speculation</u> Furthermore, the declarant is speculating as to whether a game that he has not yet seen will infringe on a copyright he	___Sustained ___Overruled

- 18 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO
 DEFENDANTS' OPPOSITION TO STARDOCK'S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY
 PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
		allegedly owns.	
36.	<p>“... Stardock released two content packs consisting of names, images, and descriptions of characters in <i>Origins</i> that are substantially similar to and/or derived from characters from ... <i>Star Control I and II</i> ...”</p> <p>Reiche Decl., p. 16, ¶ 77, lines 21-24</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.</p> <p><u>FRE 602</u> <u>FRE 701</u> Furthermore, the declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether characters in <i>Origins</i> are “substantially similar to and/or derived from characters ... from <i>Star Control I and II</i>.” As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p>	<p>___Sustained</p> <p>___Overruled</p>
37.	<p>“... Wardell admitted that <i>Origins</i> includes characters called the Arilou who are from <i>Star Control I and II</i>. Besides the identical names, below is a comparison of images of the Arilou from <i>Star Control I and II</i> and from the <i>Origins</i> content pack:” [Images of aliens allegedly from Star Control I and II and then current aliens allegedly from <i>Origins</i>]</p> <p>Reiche Decl., ¶ 78, p. 16 lines 25-</p>	<p><u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of aliens from Star Control I and II or from the <i>Origins</i> content pack.</p>	<p>___Sustained</p> <p>___Overruled</p>

	Objectionable Evidence	Grounds for Objection	Court's Ruling
	27 to p. 17 lines 1-22.		
38.	<p>“Stardock’s website and content pack describe the Arilou in <i>Origins</i> as a ‘race of green-skinned aliens who admit to having been watching the human race for a long time,’ and as ‘little green men.’ Calling themselves the Arilou Lalee’lay, they have apparently been watching humanity for a long time . . . they also seem to be almost purposefully mysterious.’ Similarly, the Arilou are described in <i>Star Control II</i> as ‘[t]he Ariloulaleelay are a mysterious race . . . they do make regular, secret visits to your world, and have done so for centuries.’ The <i>Star Control II</i> manual further describes the Arilou as ‘pale, about 1.5 meters tall, and have large, childlike heads with dark, soulful eyes . . . The Arilou may have visited Earth often in the past . . .”</p> <p>Reiche Decl., ¶ 79, p. 17 lines 23-28 to p. 18 lines 1-2.</p>	<p><u>FRE 1002</u></p> <p>The declarant has failed to include the documents required by the “best evidence” rule to demonstrate the accuracy of the alleged descriptions.</p>	<p>___Sustained</p> <p>___Overruled</p>
39.	<p>“ . . . Wardell admitted that <i>Origins</i> includes characters . . . from <i>Star Control I and II</i>. Besides the identical names, below is a comparison of images of the Chenjesu from <i>Star Control</i> and from the <i>Origins</i> content pack:”</p> <p>[Images of Chenjesu allegedly from <i>Star Control I and II</i> and then from <i>Origins</i>]</p> <p>Reiche Decl., p. 18, ¶ 80, lines 4-27</p>	<p><u>FRE 901</u></p> <p>The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of aliens from <i>Star Control I and II</i> or from <i>Origins</i>.</p>	<p>___Sustained</p> <p>___Overruled</p>

- 20 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS’ OPPOSITION TO STARDOCK’S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
40.	<p>“Stardock’s website and content pack describe the Chenjesu as ‘ambulatory crystals themselves, who fed on a unique mixture of solar and chemical processes. Peaceful and very intelligent’ and living on a ‘strange crystalline world . . .’ Similarly, the Chenjesu were described in <i>Star Control</i> as ‘[c]rystalline in substance, existing on electric energy,’ and later described in <i>Star Control II</i> as having ‘fantastic intellects,’ and being ‘peaceful,’ and being ‘a photo/chemovore (it derives its nourishment from light and ambient minerals).”</p> <p>Reiche Decl., p. 19, ¶ 81, lines 1-7</p>	<p><u>FRE 1002</u></p> <p>The declarant has failed to include the documents required by the “best evidence” rule to demonstrate the accuracy of the alleged descriptions.</p>	<p>___ Sustained</p> <p>___ Overruled</p>
41.	<p>“In addition to the content packs, Stardock also released a beta version of <i>Origins</i> that . . . is substantially similar to and/or derived from the Super Melee part of <i>Star Control II</i> in terms of the layout, user interface, functionality, and user experience . . . Various customers who preordered <i>Origins</i> and had the opportunity to test another beta version of the game . . . have also posted videos of additional content that suggests the version of the game to be released on September 20 will be substantially similar to and/or derived from <i>Star Control II</i>. Below are pictures of material from <i>Star Control II</i> as compared to material from Fleet Battles beta and other materials from <i>Origins</i> that we found online:” [Images of materials</p>	<p><u>FRE 901</u></p> <p>The declarant has failed to provide the foundation required to support his statement, or to authenticate the alleged screenshot of comparative material from <i>Star Control I</i> and <i>II</i> or from <i>Origins</i>. Furthermore, defendant has not identified any of the customers that supposedly posted videos of content indicating that <i>Origins</i> is similar to <i>Star Control I</i> and <i>II</i>, nor has the declarant identified the videos themselves that allegedly contain these materials.</p> <p><u>FRE 602</u> <u>FRE 701</u></p>	<p>___ Sustained</p> <p>___ Overruled</p>

- 21 -

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO DEFENDANTS’ OPPOSITION TO STARDOCK’S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA

	Objectionable Evidence	Grounds for Objection	Court's Ruling
	allegedly from <i>Star Control I and II</i> and then from <i>Origins</i>] Reiche Decl., ¶ 82, p. 19 lines 8-26 to p. 20 lines 1-28	Furthermore, the declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether material in <i>Origins</i> is “substantially similar to and/or derived from . . . from <i>Star Control I and II</i> .” As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702	
42.	“Moreover, the <i>Origins</i> Fleet Battles beta includes a ship-creator tool that allows players to easily create ships from <i>Star Control I and II</i> , which they can then share and Stardock then offers and distributes to purchasers of the game . . .” Reiche Decl., p. 21, ¶ 83, lines 1-3	<u>FRE 901</u> The declarant has failed to provide the foundation required to support his statement.	___Sustained ___Overruled
43.	“There are numerous examples of ships that look substantially similar to ships from <i>Star Control I and II</i> , and in some cases bear the exact same or a substantially similar name as well. Below are some examples:” [Images of ships allegedly from <i>Star Control I and II</i> and then from <i>Origins</i>] Reiche Decl., ¶ 84, p. 21 lines 10 – p. 26 line 25	<u>FRE 602</u> <u>FRE 901</u> The declarant lacks the personal knowledge necessary to make this statement, has failed to provide the foundation required, and to authenticate the alleged screenshot of comparative ships from <i>Star Control I and II</i> or from <i>Origins</i> .	___Sustained ___Overruled

	Objectionable Evidence	Grounds for Objection	Court's Ruling
44.	<p>“Given Fred’s and my ownership of the copyrights to <i>Star Control I and II</i>, and good faith belief that Stardock’s publishing of the aforementioned content infringes on our copyrights, we served DMCA notices on two of the service providers through which Stardock has been selling and distributing this content.”</p> <p>Reiche Decl., ¶ 85, p. 26 line 26 - p. 27 line 1</p>	<p><u>FRE 602</u> <u>FRE 701</u></p> <p>Furthermore, the declarant lacks the personal knowledge necessary to make this statement, as he does not have the expertise necessary to provide opinion as to whether publishing the material would infringe any alleged copyrights. As a result, his opinions constitute improper lay witness testimony that encompasses technical and/or specialized knowledge exclusively within the scope of FRE 702.</p>	<p>___ Sustained</p> <p>___ Overruled</p>
45.	<p>“I did recently see a video posted last week by someone who has had the opportunity to test and review some version of the game who said that ‘I was impressed by how well <i>Origins</i> kept the original feel and style of the classic <i>Star Control</i> games of the 90s’ and that it ‘reminded me a lot of playing <i>Star Control II</i>.’ The video can be viewed here: https://youtu.be/umeaSgfmkVI.”</p> <p>Reiche Decl., p. 27, ¶ 87, lines 10-14</p>	<p><u>FRE 602</u> <u>FRE 901</u></p> <p>The declarant lacks the personal knowledge necessary to make this statement, has failed to provide the foundation required, and to authenticate the alleged video at the provided link.</p> <p><u>FRE 801, 802</u></p> <p>Furthermore, the statements allegedly made by the unknown individual are being offered for their truth, and as such they are inadmissible hearsay without exception.</p>	<p>___ Sustained</p> <p>___ Overruled</p>

///

///

///

1 IT IS SO ORDERED.

2 DATED: _____

3 Judge Sandra Brown Armstrong

4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 - 24 -
28

[PROPOSED] ORDER RE EVIDENTIARY OBJECTIONS TO THE DECLARATION OF REICHE ISO
DEFENDANTS' OPPOSITION TO STARDOCK'S MOTION FOR TRO AND ORDER TO SHOW CAUSE WHY
PI SHOULD NOT BE GRANTED

Case No. 17-cv-07025-SBA